

Serial No.: 10/624,649

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### **REMARKS**

Claims 1-18 are currently pending in the application. Reconsideration of the rejected claims in view of the following remarks is respectfully requested.

#### **35 U.S.C. §112 Rejection**

Claims 1-18 were rejected under 35 U.S.C. §112, 1<sup>st</sup> paragraph. This rejection is respectfully traversed.

Applicants submit that this rejection should be withdrawn in view of the affidavit evidence attached hereto. In the attached affidavit, Mr. Bruce Hanson, an expert in the field of mail integration systems, avers that the specification (disclosure and drawings) would enable one of skill in the art to practice the invention without undue experimentation. The affidavit does not purport to establish facts which the specification itself does not recite. *In re Buchner*, 929 F.2d 660, 18 USPQ2d 1331 (Fed. Cir. 1991).

In the affidavit, Mr. Hanson avers that the hinge, as disclosed in the specification, is described in sufficient breadth as to allow one of skill in the art to practice this portion of the invention without undue experimentation. Additionally, Mr. Hanson avers, amongst other things, that the specification provides enough detail and information as to show (i) how the product is lifted to create a separation space at the platform 123, and (ii) how the separation conveyor 127 moves into the separation space, moves the product to the conveying mechanism and then drops the product onto the conveyor.

Applicants submit that the affidavit evidence traversing rejections is timely and should be considered by the Examiner in accordance with MPEP §716.01(a) (3); namely

(3) after final rejection, but before or on the same date of filing an appeal, upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented in compliance with 37 CFR 1.116(e).

In the present situation, the affidavit was not earlier presented since Applicants were of the opinion that the response filed on December 22, 2005 was sufficient to overcome the Examiner's rejection of claims 1-18 under 35 U.S.C. §112, 1<sup>st</sup> paragraph.

Accordingly, Applicants respectfully request that the rejection over claims 1-18 be withdrawn.

**35 U.S.C. §102 Rejection**

Claims 1-6, 8, 11, 13-16 and 18 were rejected under 35 U.S.C. §102(b) for being anticipated by U. S. Patent No. 5,222,857 to Hasegawa. This rejection is respectfully traversed.

As discussed earlier, the invention of claim 1 includes, amongst other features,

a head mechanism having a holding device for lifting a top layer of bundled product in a first orientation from the pallet to provide a separation space between the top layer of bundled product and a next, lower layer of bundled product on the pallet; and

a conveyor mechanism, extendible into the separation space, which conveys the top layer of product away from the pallet when the top layer of bundled product is lowered thereon.

(Emphasis Added)

(Claim 1)

In aspects of the invention, the head mechanism is a tilt head mechanism and the holding device is one of a vacuum source to produce a suction force and a pair of opposing arms moveable between a first position and a second, closer position to lift and lower the top layer of bundled product. (Claim 4)

In another aspect of the invention, the apparatus of claim 13 includes, amongst other features,

means for providing a separation space between a top layer of the bundled product and an adjacent lower layer of bundled product or the pallet;

means for transporting the top layer of the bundled product, in a first orientation, separated from the adjacent lower layer of bundled product or the pallet, to at least one feeding device.  
(Emphasis added.)

In further aspects of the invention, the separation means drops the top layer of bundled product onto the transporting means. (Claim 14). The separation means is one of a vacuum and moveable opposing arms capable of lifting the top layer of bundled product.

However, none of these features are shown in Hasegawa. This is evidenced in the attached affidavit of Mr. Hanson, and discussed in detail below.

In Hasegawa, as shown in FIG. 2, the apparatus includes an unloading zone 1, a loading zone 2 juxtaposed to it, and a table 5 which can reciprocate above and between the zones 1 and 2 along a rail 4 on a main framework 3. The unloading zone 1 is provided with a conveyor 6 for charging a pallet P1 carrying a stack of layers of a load W, and a lift 7 for lifting the pallet P1 to raise the load W layer by layer to a level of height corresponding to that of the reciprocating table 5. The reciprocating table 5 includes a multiplicity of carriage rollers 10 constituting a roller conveyor, and is adapted to pick up the load layer by layer in the unloading zone 1 and transfer it to the loading zone 2. Specifically, stoppers 23 and 25 are positioned to maintain the top layer of the load in a stationary position while the carriage forces itself underneath a top layer. The carriage then picks up the load, by advancing underneath the load, and transports the load to the conveyor. The carriage does not provide a separation space so that a conveyor can move the load. Also, the elements 23 and 25 are merely stoppers and

are not designed, nor are they capable of picking up a load to create a separation space.

To support the above interpretation, Mr. Hanson, in his expert opinion, avers that Hasagawa shows carriage rollers 10 which are advanced toward the product. As the carriage rollers 10 advance toward the top layer of the product, as shown in FIG. 4b, the carriage rollers 10 will begin to move underneath the product, while the stop arm 23 prevents movement of the product. The top layer of product, however, is not separated from a lower layer or product, nor is the stop arm a tilt head. As the carriage rollers 10 further advances, a single layer of the product will be moved onto the carriage rollers 10.

To accomplish this, as disclosed at col. 6, the top carriage rollers 10a abut on the adjacent side of the uppermost layer of the load W, and the load is held between the upper stopper 23 and the top carriage rollers 10 and is picked up by the friction force of the top carriage rollers 10a. However, there simply is no separation space between the top layer of bundled product and a next, lower layer, nor is there any device which can provide such a feature. Instead, the carriage rollers 10 advance underneath the top layer by actually forcing itself underneath the top layer of product onto the carriage rollers 10, and then transporting the top layer away from the stack.

According to Mr. Hanson, in his expert opinion, the elements 23 and 25 are not designed to be a head mechanism, nor are these elements designed to lift the top layer of product to create a separation space. After a careful reading of the Hasagawa reference, it is Mr. Hanson's opinion that element 23 is a lower stopper and element 25 is an aligning stopper. These stoppers are used to hold the product or load, W, while the carriage rollers advance underneath the topmost layer, via a frictional force. According to Mr. Hanson, one of skill would readily recognize that the stoppers 23 and 25 are not designed to pick the load up to create a separation space, nor is this possible with the use of the stoppers. For example, stopper 23 is mounted in a linear

configuration to the rail 4. This would prevent the stopper from being movable or rotatable to lift the load in order to create a separation space.

Thus, it is readily apparent that Hasegawa does not include a head mechanism having a holding device for lifting a top layer of bundled product in a first orientation from the pallet to provide a separation space between the top layer of bundled product and a next, lower layer of bundled product on the pallet. Instead, Hasegawa shows the carriage rollers 10 merely moving underneath the stack of product. Applicants submit that the carriage rollers are actually akin to the claimed conveyor mechanism, and that there is no holding device, in Hasegawa, to provide a separation space.

Applicants further submit that the carriage rollers 10, or any other feature of Hasegawa, do not expressly or inherently perform a function identical to that of the means element, nor are the carriage rollers 10 an equivalent structure to that disclosed in the subject specification. *In re Donaldson Company, Inc.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994). MPEP § 2182. By way of explanation, as discussed above, and confirmed by Mr. Hanson, the carriage rollers do not hold and lift the product to provide a separation between the products so that a conveyor can be placed therebetween. The carriage rollers 10 only move underneath the single layer of product, but they do not hold and separate the top layer from a lower layer, in order for a conveyor to move the product. In fact, the carriage rollers 10 would be equivalent in structure and function only to the means for transporting the top layer of the bundled product, in a first orientation, separated from the adjacent lower layer of bundled product or the pallet, to at least one feeding device.

As to the structure of the carriage rollers, this structure also is not equivalent to that of the claimed invention. The specification clearly describes the means for providing a separation space between a top layer of the bundled product and an adjacent lower layer of bundled product or the pallet as either a vacuum head or a pair of opposing arms. None of these structures are close to that of the carriage rollers.

Accordingly, that the rejection over claims 1-6, 8, 11, 13-16 and 18 be withdrawn.

**35 U.S.C. §103 Rejection**

Claim 7 was rejected under 35 U.S.C. §103(a) for being unpatentable over Hasegawa and U.S. Patent No. 5,427,252 to Teegarden. Claims 9, 10 and 17 were rejected under 35 U.S.C. §103(a) for being unpatentable over Hasegawa in view of U.S. Patent No. 4,119,219 to Carlson. These rejections are respectfully traversed.

These claims depend from allowable base claims and thus should also be in condition for allowance. Accordingly, Applicants respectfully request that the rejection over claims 7, 9, 10 and 17 be withdrawn.

**CONCLUSION**

In view of the foregoing remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicant hereby makes a written conditional petition for extension of time, if required, charging any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 19-0089.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew M. Calderon', with a stylized, cursive flourish at the end.

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